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In re Application of	:	
VERREAULT et al.	:	
U.S. Application No. 09/787,782	:	DECISION ON PETITION
PCT No.: PCT/CA99/00849	:	UNDER 37 CFR 1.47(b)
Int. Filing Date: 21 Septmeber 1999	:	
Priority Date: 21 September 1998	:	
Attorney Docket No.: 2126.005	:	
For: CLEANSING TOWLETTE DISPENSER	:	

This is a decision on applicant's "Petition under 37 C.F.R. 1.47(b)" filed 02 July 2001 to accept the application without the signatures of joint inventors, Richard Verreault and Alain Jacques. The petition fee of \$130 has been charged to Deposit Account no. 13-0439.

BACKGROUND

On 21 Septmeber 1999, applicant filed international application no. PCT/CA99/00849 which claimed a priority date of 21 September 1998. A proper Demand was filed with the International Preliminary Examination prior to the 19th month from the earliest claimed priority date. Accordingly, the thirty-month time period for submitting the requisite basic national fee in the United States of America was extended to expire 30 months from the international filing date, i.e., 21 March 2001.

On 21 March 2001, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); English translation of international application; and an assignment.

On 23 April 2001, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 must be filed. The notification set a two month time limit in which to respond.

On 02 July 2001, applicant filed "Petition under 37 CFR 1.47(b)"; a declaration and power of attorney executed declaration on behalf of the assignee -- Visimax USA, Inc.; and an assignment.

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the requisite petition fee under 37 CFR 1.17(i); (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the nonsigning inventor; (4) an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as agent for the nonsigning inventor; (5) proof of proprietary interest in the application; and, (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damages. The 37 CFR 1.47(b)

applicant has satisfied the requirements of item (1), (4), and (5) above. However, items (2), (3), and (6) have not been satisfied.

Concerning Item (2), Section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.), **Proof of Unavailability or Refusal**, states, in part:

"Where a refusal of the inventor to sign the application papers is alleged, the circumstances of its refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Before a refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature.

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which the conclusion is based should be stated in an affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration."

A review of the present petition reveals that applicant has not satisfied the item (2) above, in that the applicant has not shown that a bona fide attempt was made to present the application papers, including the specification, claims, and drawings to Richard Verreault and Alain Jacques. No documentary evidence to support the refusal or the attempt was provided in the petition.

In order to meet the requirements of 37 CFR 1.47(b) and Section 409.03(d) of the MPEP, a statement of facts is needed from a person having first hand knowledge of the facts that a complete copy of the application papers was sent to Richard Verreault and Alain Jacques and when such papers were sent. In addition, copies of documentary evidence such as a certified mail return receipt, cover letter of instruction, telegrams, etc., should be supplied with the declaration.

Regarding Item (3), petitioner has not provided the last known address of the nonsigning inventors.

Regarding Item (6), petitioner has not show that such action is necessary to preserve the rights of the parties or to prevent irreparable damage has been made.

For the reasons stated above, it would not be appropriate to accept the application without the signature of Richard Verreault and Alain Jacques under 37 CFR 1.47(b) at this time.

CONCLUSION

The petition filed under 37 CFR 1.47(b) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO MONTHS** from the mailing date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b).

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Legal Affairs Division of the PCT Legal Office.



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